

REMARKS

This application has been reviewed in light of the Office Action dated August 6, 2004. Claims 1-40 are presented for examination, of which Claims 1, 9-11, 19-21, 29-31, 39, and 40 are in independent form. Claims 1-6, 9-17, and 19-40 have been amended to define more clearly what Applicant regards as his invention. Favorable reconsideration is requested.

A Claim To Priority and a certified copy of the priority document for this application were filed on June 27, 2001, as evidenced by the returned receipt postcard bearing the stamp of the Patent and Trademark Office, a copy of which is attached hereto. Applicant respectfully requests acknowledgment of the claim for foreign priority and the receipt of the certified copy.

Claims 1-6, 9, 11-16, 19, 21-26, 29, 31-36, and 39 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,563,796 (*Saito*); Claims 7, 17, 27, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Saito* in view of U.S. Patent No. 6,621,805 (*Kondylis et al.*); and Claims 10, 20, 30, and 40 were rejected under Section 103(a) as being unpatentable over *Saito* in view of U.S. Patent No. 5,581,544 (*Hamada et al.*).

As shown above, Applicant has amended independent Claims 1, 9-11, 19-21, 29-31, 39, and 40 in terms that more clearly define what he regards as his invention. Applicant submits that these amended independent claims, together with the remaining claims dependent thereon, are patentably distinct from the cited prior art for at least the following reasons.

The aspect of the present invention set forth in Claim 1 is a service management apparatus for use in a network system capable of providing various services dispersed in plural apparatuses, managing service information of the various services present on the network system and transferring the managed service information in response to a request from an external apparatus. The service management apparatus includes test means, evaluation means, and renewal means. The test means execute a process of a trial use of one of the various services provided by the apparatus. The evaluation means evaluate the quality of the service, based on a result of the trial use of the service executed by the test means. The renewal means renew the managed service information based on the quality evaluated by the evaluation means.

Among other important features of Claim 1 are that the test means execute a process of a trial use of one of the various services provided by the apparatus and the evaluation means evaluate the quality of the service, based on a result of the trial use of the service executed by the test means.

Saito relates to a method of traffic quality evaluation and traffic measurements in a packet network and asynchronous transfer mode network. *Saito* states at column 16, lines 12-16, that the *Saito* method enables high precision evaluation of the quality of services without the loss of traffic information, and without being affected by modeling errors, and furthermore, without the use of numerical equations.

Applicant understands *Saito*, based on the above-cited passage, as merely discussing that the *Saito* method is directed to the evaluation of the quality of communication for ensuring the quality of service. However, nothing has been found in *Saito* that would teach or suggest test means executing a process of a trial use of one of the

various services provided by the apparatus and evaluation means evaluating the quality of the service, based on a result of the trial use of the service executed by the test means, as recited in Claim 1.

For at least the above reason, Applicant submits that Claim 1 is clearly patentable over *Saito*.

Independent Claims 11, 21, and 31 are method, storage medium, and program claims respectively corresponding to apparatus Claim 1, and are believed to be patentable over *Saito* for at least the same reason as discussed above in connection with Claim 1. Additionally, independent Claims 9, 11, 19, 21, 29, 31, and 39 include features similar to those discussed above in connection with Claim 1. Accordingly, Claims 9, 11, 19, 21, 29, 31, and 39 are believed to be patentable over *Saito* for reasons substantially similar as those discussed above in connection with Claim 1.

The aspect of the present invention set forth in Claim 10 is an apparatus connected to a service management apparatus for managing service information of various services present on a network system and transferring the managed service information in response to a request from an external apparatus. The apparatus includes test means, evaluation means, and substitution means. The test means execute a process of a trial use of a service of another apparatus belonging to a same group as that of the apparatus. The evaluation means evaluate the quality of the service, based on a result of the trial use of the service executed by the test means. The substitution means instruct, in a case the quality evaluated by the evaluation means does not meet a predetermined reference, the service management apparatus to substitute the service provided by the another apparatus with a service provided by the apparatus.

Among other important features of Claim 10 are that the test means execute a process of a trial use of a service of another apparatus belonging to a same group as that of the apparatus, and the evaluation means evaluate the quality of the service, based on a result of the trial use of the service executed by the test means.

For reasons substantially similar to those discussed above in connection with Claim 1, Applicant submits that Claim 10 is clearly patentable over *Saito*, taken alone.

Hamada et al. relates to a method and apparatus for evaluating the quality of service in an ATM multiplexing apparatus in which priority control by buffer reservation or priority control using a classified priority control scheme is performed, and for controlling call admissions and optimizing the priority control on the basis of the evaluation. However, nothing has been found in *Hamada et al.* that would remedy the deficiencies of *Saito*, and in particular teaching or suggesting test means executing a process of trial use of a service of another apparatus belonging to a same group as that of the apparatus, and evaluation means evaluating the quality of the service, based on a result of the trial use of the service executed by the test means, as recited in Claim 10.

Therefore, even if *Saito* and *Hamada et al.* were to be combined in the manner suggested by the Examiner, assuming such a combination would even be permissible, the result would not meet the terms of Claim 10. Accordingly, Applicant submits that Claim 10 is clearly patentable over *Saito* and *Hamada et al.*


Independent Claims 20, 30, and 40 are method, storage medium, and program claims respectively corresponding to apparatus Claim 10, and are believed to be patentable over *Saito* and *Hamada et al.* for at least the same reason as discussed above in connection with Claim 10.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

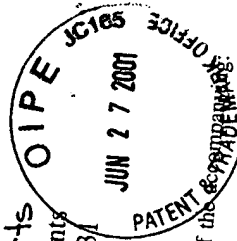


Frank A. DeLucia
Attorney for Applicant
Registration No.: 42,476

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_MAIN 462804v1

Box Missing Parts
Commissioner for Patents
Washington, D.C. 20231



Date 6 / 27 / 01
Mo. Day Yr.

Atty. Docket 35-C15231

Application No. 09/823,990

Sir:

Kindly acknowledge receipt of the Response to Notice of Appeal

☐ Response to Official Action.

☒ Check for \$ 130.00 (claims fee) (surcharge fee)

☐ Petition under 37 CFR 1.136 and Check for \$ _____

☐ Notice of Appeal and Check for \$ _____

☐ Information Disclosure Statement, PTO-1449 and _____

☒ Claim for priority and certified copies of one (1) documents

☐ Issue fee transmittal and Check for \$ _____

☒ Other (specify) Response to Notice to File Missing Parts priority application

by placing your receiving date stamp hereon and mailing or returning to deliver.

Atty. LSY3/co

Due Date 7 / 21 / 01
Mo. Day Yr.

37 CFR 1.8 ☐

37 CFR 1.10 ☐

By Hand ☒